IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Bakhtawar Singh Vs. State of Rajasthan & Others
(S.B. Civil Writ Petition No.4359/2004)

DATE OF ORDER : April 11, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. B.M. Bohra for the petitioner.
Mr. S.N. Tiwari, Dy. G.A.

BY THE COURT :

The instant writ petition has been filed by the petitioner challenging the order dated 09.08.2004 passed by the respondent department whereby application of the petitioner for allotment of mine is rejected.

According to facts of the case set out in the writ petition, the respondent Department issued notification dated 20.10.1998 published in the Rajasthan Gazette Extraordinary dated 23.02.1998 whereby certain area was declared free for grant of mining lease for mineral 'dolomite'. The said notification was

issued in exercise of power under Rule 75 of the Rajasthan Mineral Concession Rules, 1960 vide Annex.-1 to the writ petition.

Upon perusal of the said notification it is revealed that certain land earlier reserved for prospecting and mining was declared free by the government for grant of mining leases and it was provided vide the notification that for the purpose of issuing sanction whatever amount the State Government has spent on the area the same shall be deposited with the government treasury.

The petitioner applied for grant of mining lease for the mineral dolomite in the area village Indon-ki-Talai, Hem Singhji-ki-Dhani, Jodhpur (M.L. No.5/98). In the application which was submitted before the Asstt. Mining Engineer, Balesar on 17.07.1998 the petitioner submitted all the documents showing status/position of the land and, so also, the required affidavits. The petitioner also deposited a sum of Rs.1,500/- as the requisite fee. It is submitted by the petitioner that his application for grant of mining lease was complete in all respects and, therefore, he was certain for the same to be granted in his favour. He repeatedly knocked the door of the respondent; but, it was informed to him that his application was in process for the grant of the lease and necessary orders will be sent to his

residence. It was also told by the respondents that the petitioner need not approach the office again and again. It is submitted by the petitioner that upon the assurance of the respondents he was certain for the decision in his favour.

It is stated in the writ petition that as a measure of abundant caution, the Asstt. Mining Engineer, Balesar wrote a letter on 16.11.1998 to the Divisional Forest Officer to ascertain and give report whether the area applied for by the petitioner at all falls in the forest area or not. In pursuance of the said letter dated 16.11.1998, it was informed by the Divisional Forest Officer vide letter dated 06.02.1999 after making all necessary enquiries that the area applied for by the petitioner does not fall in the forest area. The grievance of the petitioner in the writ petition is that after near about 7 years since the petitioner applied for the mining lease, now, by impugned order dated 09.08.2004, the application of the petitioner has been rejected.

Vide the impugned order dated 09.08.2004, it is stated that no lease can be granted for mineral dolomite as per policy decision taken by the government that mining lease for dolomite mineral shall not be granted to private individuals and the same was reserved for excavation by the government itself. The petitioner is challenging the validity of the said order on the ground that the reason which is mentioned in Annex.-5 is totally

false and wrong because vide notification published on 23.02.1998 the area for which the petitioner applied was declared free for the purpose of mining. The relevant extract of the notification dated 23.02.1998 reads as under :

"जयपुर, अक्टूबर 20, 1998

संख्या प.19(3)खान/ग्रुप-1/97:-सर्वसाधारण को सूचित किया जाता है कि खनिज रियायती नियमावली, 1960 के नियम 75 में प्रदत्त शक्तियों का प्रयोग करते हुए राज्य सरकार द्वारा खनिज डोलोमाइट ब्लाक-I निकट ग्राम इन्दों की ढाणी, जिला जोधपुर (II) मोरिया मन्जासर, जिला जोधपुर (III) इन्डों की तलाई, हेमसिंह की ढाणी जिला जोधपुर एवं (4) अमला छाला, जिला जोधपुर में अधिसूचना क्रमांक प.16(17)खान/ग्रुप-1/93, जयपुर दिनांक 26 जून 1993 ो विभागीय पूर्वेक्षण कार्य हेतु आरक्षित किया गया था, जिसका राजस्थान राजपत्र में विशेषांक के पृष्ठ सं 47-48 दिनांक 29 जून 93 को प्रकाशन हुआ।

उपरोक्त वर्णित क्षेत्रों में खनिज रियायती नियमावली, 1960 के नियम 59 के प्रयोजनार्थ इस अधिसूचना के प्रकाशन की तिथि को छोड़ कर 30 दिन पश्चातस्त्र रिक्त घोषित किया जाता है।"

In this notification, it is further specifically mentioned that whatever amount the State Government has spent for the aforesaid area the same shall be required to be deposited in the government treasury. It is contended by learned counsel for the petitioner that while exercising power under Section 75 of the Rules of 1960 the said notification was issued and application was filed by various persons inter alia the petitioner; however, while narrating wrong facts in the impugned order the application filed by the petitioner was rejected and it is ordered that the amount deposited by the petitioner is also forfeited.

A pointed query was made to the counsel for the State whether any policy decision was taken by the government after issuance of the said notification. Upon that, the learned Deputy Government Advocate has filed an affidavit and placed on record

two documents dated 18.08.1981 and 05.04.2007 and stated that in the year 1981 the said decision was taken by the government not to grant lease of dolomite mines to private individuals and reserved mineral dolomite for exclusive working in public sector undertaking. No notification or policy decision after issuance of the notification dated 23.02.1998 is filed. So also, in the communication dated 05.02.2007, it is informed by the Mining Department that the application is rejected only on the basis of letter dated 18.08.1981 issued on the basis of some policy decision taken to keep mineral dolomite reserved for working in the public sector undertakings.

The Government Advocate appearing on behalf of the respondents has submitted while filing reply that the area marked upon for departmental prospecting work was also reserved and vide notification dated 23.02.1998 it was declared free for the grant of mining lease; but, no such licence was granted to any person for prospecting mineral dolomite. It is further submitted that any person could apply under the existing policy.

In the reply, it is denied that the department ever assured the petitioner that his application was in process. It is further contended that the petitioner is deliberately trying to mislead the Hon'ble Court knowingly well that there is a ban upon the grant of mining lease for the mineral dolomite and the said ban is effective since 28.08.1981. It is further submitted that so far as the notification dated 23.02.1998 is concerned it only seeks to let certain areas free which were earlier reserved. It is also submitted that the mineral dolomite falls within principal minerals.

According to the reply filed by the respondents, the

decision on the application for grant of mining lease for mineral dolomite is taken at the State level and accordingly any application received is sent to the State Government. As per the policy decision of the State Government the permission for the mineral dolomite is only given to the public sector undertakings and companies. The individuals are not entitled to grant of mining lease for mineral dolomite and this position is no more disputed on the face of record. It is contended by the respondents that the petitioner is trying to project as if vide notification dated 23.02.1998 the grant of mining lease for mineral dolomite was let free whereas notification dated 23.02.1998 only declared certain area free for mining lease for mineral dolomite and it nowhere said that permission for mining of dolomite which could be given only to the public sector undertakings could now be given to the individuals like the petitioner and as such the petitioner is trying to put forth interpretation which is not conveyed by the notification dated 23.02.1998, therefore, the rejection of the petitioner's application is not illegal or without any valid foundation.

It is specifically stated vide para 9 of the reply that vide circular dated 18.08.1981 the mineral dolomite was reserved for the public sector undertakings and hence, there was no occasion to grant mining lease in favour of the petitioner for dolomite. It is contended that so far as issuance of the notification dated 23.02.1998 is concerned, it nowhere affects the policy decision of the State Government taken vide circular dated 18.08.1981 that the mineral dolomite is earmarked for the public sector undertakings and this notification only seeks to let the area free which was earlier reserved for the survey work by the State Government. On the basis of the said circular dated 18.08.1981,

it is contended on behalf of the respondents that when the policy remained unchanged the mineral dolomite continues to be reserved for the public sector undertakings and, therefore, there is no occasion to grant mining lease to the individuals like the petitioner.

I have carefully perused the entire record.

It is not disputed before the Court that prior to issuance of notification dated 23.02.1998, the area Indon-ki-Dhani was reserved but, by this notification, it was declared free for grant of mining lease. Upon perusal of the notification dated 23.02.1998, the purpose of issuance of the notification is laid bare by the stipulation contained therein which is as under :

"उपरोक्त वर्णित क्षेत्रों में पूर्वेक्षण अनुक्षापत्र/खनन पट्टों की स्वीकृति करते समय विभाग द्वारा जोभी धनराशि व्यय की गई है, उसे राजकोष में जमा कराना होगा।"

This assertion clearly shows the intention of the government that a decision has been taken by the government to grant lease for mineral dolomite also and, in pursuance of this notification, application was filed by the petitioner and adequate enquiry was also made by the Mining Department from the Forest Department whether the said area fell in the forest area.

Therefore, obviously the application of the petitioner has been rejected for an alien ground not germane to the consideration of applications under the notification dated 23.02.1998. It is strange that the reply of the respondents is totally unfounded on any sound reason that no applications were invited for the purpose of granting lease of dolomite mineral mine though the government decided to issue licence for the areas specified in the notification dated 23.02.1998; but, according to the reply, on the basis of the so called circular dated 18.08.1981, purporting to be issued in pursuance of the policy

decision of the State Government, the application of the petitioner was rejected.

I have also gone through the circular dated 18.08.1981. It cannot be treated to be a circular because it is stated in the said communication dated 18.08.1981 that upon the proposal of the Mines & Geology Department the Government agreed that the mineral dolomite exclusively be reserved for working in public sector undertaking. By its tenure, letter dated 18.08.1981 cannot be treated to be a policy decision of the Government. The petitioner is claiming his right under the notification dated 23.02.1998 and letter dated 18.08.1981 does not come in way of consideration of application for mining lease under the notification dated 23.02.1998.

I have also taken into consideration Annex.-R/2 dated 05.04.2007, issued by the Mining Superintending Engineer, Directorate of Mines & Geology, Udaipur whereby it is categorically denied by the authority of the State that there is no order of the Government, except letter dated 18.08.1981, prohibiting grant of mining lease in respect of mineral dolomite. As aforesaid, letter dated 18.08.1981 does not, in any manner, convey that the State Government have already adopted policy decision not to grant lease in respect of mineral dolomite in favour of private individuals. The acceptance of the proposal by itself is not the decision of the government resolving upon adoption of particular policy. Had it been so, it could not have been ignored by the State Government while issuing notification dated 23.02.1998. Therefore, obviously, the ground for rejection of the petitioner's application for grant of mining lease in respect of mineral dolomite in the area specified in the relevant notification is without any basis and arbitrary. The

action of the State Government is violative of Articles 14 and 19 (1)(g) of the Constitution of India.

In the present writ petition, neither the respondents have placed on record any specific policy decision of the State Government nor have the respondents pointed out that after issuance of notification dated 23.02.1998 any policy decision has been taken, therefore, the respondent department is under obligation to consider the applications filed in pursuance of notification dated 23.02.1998 by inter alia the petitioner within the parameters of notification dated 23.02.1998 in consonance with provisions of law and, thereafter, pass appropriate orders. In the present case, if the petitioner is otherwise eligible and his application, upon consideration by the concerned authority under the notification dated 23.02.1998, succeeds, I see no reason why the petitioner's application should be rejected for any ground not available to the respondents.

Consequently, the present writ petition is allowed. The impugned order dated 09.08.2004 (Annex.-5 to the writ petition) is quashed and set aside. The application of the petitioner shall be considered while ignoring letter dated 18.08.1981 for grant of mining lease for mineral dolomite by the respondents strictly within the parameters of notification dated 23.02.1998 in pursuance of which it is filed, in accordance with law and appropriate orders shall be passed within two months from today.

No order as to costs.

(Gopal Krishan Vyas) J.